

ASSEMBLY BILL

No. 1929

Introduced by Assembly Member Hall

February 17, 2010

An act to amend Section 2301 of the Fish and Game Code, relating to invasive aquatic species.

LEGISLATIVE COUNSEL'S DIGEST

AB 1929, as introduced, Hall. Invasive aquatic species: mussels.

Existing law, until January 1, 2012, generally prohibits a person from possessing, importing, shipping, or transporting in the state, or from placing, planting, or causing to be placed or planted in any water within the state, dreissenid mussels, and authorizes the Director of Fish and Game or his or her designee to engage in various enforcement activities. Existing law exempts a public or private agency that operates a water supply system from those enforcement activities, if the operator of the facilities has prepared and implemented a prescribed plan to control or eradicate dreissenid mussels.

Existing law provides that a person who violates or resists, delays, obstructs, or interferes with the implementation of these provisions is subject to a penalty, in an amount not to exceed \$1,000, that is imposed administratively by the department.

This bill would provide that an operator of water delivery and storage facilities, who has prepared, initiated, and is in compliance with a plan to control and eradicate dreissenid mussels in accordance with the above existing provisions of law, would not be subject to any civil or criminal liability for the introduction of dreissenid mussel species as a result of operations of those facilities. The bill would provide that neither the director's enforcement activities, nor the prohibition on a person

possessing, importing, shipping, or transporting dreissenid mussels in the state would apply to an operator who has prepared, initiated, and is in compliance with a plan to control and eradicate dreissenid mussels, unless the department had required the operator to update its plan and the operator failed to do so.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) Quagga mussels, related to zebra mussels in the genus
4 Dreissena, are native to the Black and Caspian Seas of Eastern
5 Europe.
- 6 (b) Both zebra and quagga mussels appeared in the Great Lakes
7 of the United States in the late 1980s, apparently brought to this
8 country in the ballast water of transoceanic ships.
- 9 (c) Quagga mussels can reproduce quickly. Up to forty thousand
10 (40,000) quagga mussels can colonize within one square meter.
11 The mussels damage water supply infrastructure by clogging pipes
12 and pumping equipment. In addition, the mussels outcompete other
13 species for food and with their large numbers can overwhelm native
14 ecosystems.
- 15 (d) While California mandates that water system operators
16 manage their reservoirs and delivery systems to prevent and control
17 mussel infestations, complete eradication of quagga mussels in
18 any infested large water body is unlikely. Eradication efforts in
19 the American Midwest have failed.
- 20 (e) Given that eradication from large water bodies is physically
21 impossible and that water delivery systems are essential to maintain
22 public health and safety, the Legislature finds that implementation
23 of the available measures to control mussel infestations and prevent
24 the spread of the mussels to new water bodies is the most that can
25 reasonably be required of water supply agencies.
- 26 (f) Compliance with current legal requirements for mussel
27 monitoring and management plans in water supply systems are
28 sufficient to protect agencies from unlimited liability for dealing
29 with the consequences of this invasive species.

SEC. 2. Section 2301 of the Fish and Game Code is amended to read:

2301. (a) (1) Except as authorized by the department, a person shall not possess, import, ship, or transport in the state, or place, plant, or cause to be placed or planted in any water within the state, dreissenid mussels.

(2) The director or his or her designee may do all of the following:

(A) Conduct inspections of conveyances, which include vehicles, boats and other watercraft, containers, and trailers, that may carry or contain adult or larval dreissenid mussels. Included as part of this authority to conduct inspections is the authority to temporarily stop conveyances that may carry or contain adult or larval dreissenid mussels on any roadway or waterway in order to conduct inspections.

(B) Order that areas in a conveyance that contain water be drained, dried, or decontaminated pursuant to procedures approved by the department.

(C) Impound or quarantine conveyances in locations designated by the department for up to five days or the period of time necessary to ensure that dreissenid mussels can no longer live on or in the conveyance.

(D) (i) Conduct inspections of waters of the state and facilities located within waters of the state that may contain dreissenid mussels. If dreissenid mussels are detected or may be present, the director or his or her designee may order the affected waters or facilities closed to conveyances or otherwise restrict access to the affected waters or facilities, and shall order that conveyances removed from, or introduced to, the affected waters or facilities be inspected, quarantined, or disinfected in a manner and for a duration necessary to detect and prevent the spread of dreissenid mussels within the state.

(ii) For the purpose of implementing clause (i), the director or his or her designee shall order the closure or quarantine of, or restrict access to, these waters, areas, or facilities in a manner and duration necessary to detect and prevent the spread of dreissenid mussels within the state. No closure, quarantine, or restriction shall be authorized by the director or his or her designee without the concurrence of the Secretary of the *Natural* Resources Agency. If a closure lasts longer than seven days, the department shall update

1 the operator of the affected facility every 10 days on efforts to
2 address the dreissenid infestation. The department shall provide
3 these updates in writing and also post these updates on the
4 department's Internet Web site in an easily accessible manner.

5 (iii) The department shall develop procedures to ensure proper
6 notification of affected local and federal agencies, and, as
7 appropriate, the Department of Boating and Waterways, the
8 Department of Water Resources, the Department of Parks and
9 Recreation, and the State Lands Commission in the event of a
10 decision to close, quarantine, or restrict a facility pursuant to this
11 paragraph. These procedures shall include the reasons for the
12 closure, quarantine, or restriction, and methods for providing
13 updated information to those affected. These procedures shall also
14 include protocols for the posting of the notifications on the
15 department's Internet Web site required by clause (ii).

16 (iv) When deciding the scope, duration, level, and type of
17 restrictions, and specific location of a closure or quarantine, the
18 director shall consult with the agency, entity, owner, or operator
19 with jurisdiction, control, or management responsibility over the
20 marina, boat launch facility, or other facility, in order to focus the
21 closure or quarantine to specific areas and facilities so as to avoid
22 or minimize disruption of economic or recreational activity in the
23 vicinity.

24 (b) (1) Upon a determination by the director that it would further
25 the purposes of this section, other state agencies, including, but
26 not limited to, the Department of Parks and Recreation, the
27 Department of Water Resources, the Department of Food and
28 Agriculture, and the State Lands Commission, may exercise the
29 authority granted to the department in subdivision (a).

30 (2) A determination made pursuant to paragraph (1) shall be in
31 writing and shall remain in effect until withdrawn, in writing, by
32 the director.

33 (c) (1) Except as provided in paragraph (2), Division 13
34 (commencing with Section 21000) of the Public Resources Code
35 does not apply to the implementation of this section.

36 (2) An action undertaken pursuant to subparagraph (B) of
37 paragraph (2) of subdivision (a) involving the use of chemicals
38 other than salt or hot water to decontaminate a conveyance or a
39 facility is subject to Division 13 (commencing with Section 21000)
40 of the Public Resources Code.

(d) (1) A public or private agency that operates a water supply system shall cooperate with the department to implement measures to avoid infestation by dreissenid mussels and to control or eradicate any infestation that may occur in a water supply system. If dreissenid mussels are detected, the operator of the water supply system, in cooperation with the department, shall prepare and implement a plan to control or eradicate dreissenid mussels within the system. The approved plan shall contain the following minimum elements:

(A) Methods for delineation of infestation, including both adult mussels and veligers.

(B) Methods for control or eradication of adult mussels and decontamination of water containing larval mussels.

(C) A systematic monitoring program to determine any changes in conditions.

(D) The requirement that the operator of the water supply system *permit inspections by the department as well as* cooperate with the department to update or revise control or eradication measures in the approved plan to address scientific advances in the methods of controlling or eradicating mussels and veligers.

(2) ~~Paragraph (2) of subdivision (a) does not apply to~~ *If the operation operator of water delivery and storage facilities for the purposes of providing public water supply if the operator of the facilities purposes has prepared prepared, initiated, and implemented a is in compliance with all the elements of an approved plan to control or eradicate dreissenid mussels in accordance with paragraph (1). (1), the requirements of subdivision (a) do not apply to the operation of those water delivery and storage facilities, and the operator is not subject to any civil or criminal liability for the introduction of dreissenid mussel species as a result of those operations. The department may require the operator of a facility to update its plan, and if the plan is not updated or revised as described in subparagraph (D) of paragraph (1), subdivision (a) shall apply to the department may engage in operation of the actions described in paragraph (2) water delivery and storage facilities covered by the plan until the operator updates or revises the plan and initiates and complies with all of subdivision (a). the elements of the updated or revised plan.*

(e) Any entity that discovers dreissenid mussels within this state shall immediately report the discovery to the department.

(f) (1) In addition to any other penalty provided by law, any person who violates this section, any verbal or written order or regulation adopted pursuant to this section, or who resists, delays, obstructs, or interferes with the implementation of this section, is subject to a penalty, in an amount not to exceed one thousand dollars (\$1,000), that is imposed administratively by the department.

(2) A penalty shall not be imposed pursuant to paragraph (1) unless the department has adopted regulations specifying the amount of the penalty and the procedure for imposing and appealing the penalty.

(g) The department may adopt regulations to carry out this section.

(h) Pursuant to Section 818.4 of the Government Code, the department and any other state agency exercising authority under this section shall not be liable with regard to any determination or authorization made pursuant to this section.

~~(h)~~

(i) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.